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May 27, 2008

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: December 19, 2007

Case Number: TSO-0580

This Decision concerns the eligibility of XXXX XXXXXX (hereinafter referred to as "the Individual") to hold an access authorization under the Department of Energy's (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the Individual's access authorization should not be granted.

I. BACKGROUND

On September 20, 2006, the Individual executed a Questionnaire for National Security Positions form (QNSP) and submitted it to a DOE Local Security Office (LSO).¹ In this QNSP, the Individual responded "yes" to Question 24(a) which asked, in pertinent part: "Since the age of 16 or in the last 7 years, have you *illegally* used any controlled substance, for example, marijuana, . . . hallucinogenics (LSD, PCP, etc.). . . ?" Exhibit 6 at 30 (emphasis in the original). Individuals who answered "yes" to Question 24(a) are required to list each illegal drug that they have used, the number of times they used the illegal drug, and the time period in which the illegal drug use occurred. The Individual indicated that he used marijuana once in November 2004. *Id.* at 31. The Individual made no mention of hallucinogenic mushroom consumption in his drug use listing.

On November 15, 2006, the Individual was interviewed by an Investigator for the Office of Personnel Management (OPM).² During this interview, the Individual was asked if he had used

¹ The QNSP appears in the record as Exhibit 6.

² The OPM Investigator's report of this interview appears in the record as pages 52-53 of Exhibit 8.

any illegal drugs during the past seven years. The Individual responded by stating that he had used marijuana on one occasion, in November 2004. Exhibit 8 at 53.

On August 21, 2007, the LSO conducted a Personnel Security Interview (PSI) with the Individual and questioned him extensively about his illegal drug use.³ During this PSI, the Individual was asked if he had ever used hallucinogenic mushrooms. The Individual responded in the affirmative. Exhibit 7 at 9. The Individual admitted that he had used hallucinogenic mushrooms once in February or March of 2004, when he was a senior in high school. Exhibit 7 at 24. The Individual indicated that his first marijuana use occurred when he was in the eighth grade. Exhibit 7 at 11. The Individual indicated that his last use of marijuana occurred in 2004 or 2005, his freshman year of college, when he was 18 years old. Exhibit 7 at 11-12. The Individual further stated that he had used marijuana a total of five or six times in his life. Exhibit 7 at 12-13. The Individual then stated that he thought his first use of marijuana occurred in 1999. Exhibit 7 at 12-13.⁴ The Individual indicated that he no longer uses illegal drugs and intends to avoid them in the future. Exhibit 7 at 43.

During this PSI, the Individual was shown a copy of the QNSP he had completed and submitted and informed that he was required to list all of his illegal drug use that occurred during the previous ten years, **or since the age of 16**, whichever is shorter, in his QNSP. Exhibit 7 at 83-84 (emphasis supplied). The Individual was then asked if his answers in the QNSP were consistent with the information he had provided earlier in the PSI. The Individual responded by stating

Well, I think the last time I used it, I thought I was in my freshman year of college, that would have been about the right time I used it. Um, as far as the number of times, within that time frame I guess it should have been more, but at that time, I don't know if I were confused about how many times I used it then, or how many times total.

Exhibit 7 at 85. The Individual was then informed that since he had signed the QNSP in 2006, ten years would take him back to 1996. Exhibit 7 at 86. The Individual then stated "Yes, it was total number of times used is more than that." Exhibit 7 at 86. The Individual was then asked

³ The transcript of the August 21, 2007, PSI appears in the record as Exhibit 7.

⁴ Initially, when the Individual was asked if he had ever "grown, trafficked or manufactured" marijuana, the Individual answered "no." Exhibit 7 at 15. Later in the PSI, the Individual explained that someone else had planted a marijuana plant in his family's garden. Exhibit 7 at 22-23. At a later point in the interview, the Individual was asked if he had ever manufactured, trafficked or sold any illegal drug other than the marijuana plant that had been previously discussed. The Individual responded by stating:

I have to think hard about this, it's been a while. There is yes, that's right, there was, there was another plant, there was, besides that little one, it never grew more than, uh, more than the other one, there was a second plant. It was never trafficked, it was never, uh, picked or trafficked.

Exhibit 7 at 27. The Individual was then asked who grew the second plant, the Individual responded by stating: "I think it was, uh, yep, that was me, I thought it was my brother that's why I didn't say anything, yeah, that was me. And it never grew to, more than the other plant." Exhibit 7 at 27.

whether the dates of marijuana use he had supplied in the QNSP were correct. The Individual stated “um, yes, there should have been more dates on there for the other times used.” *Id.* The Individual was then asked why he didn’t disclose all of the dates. The Individual responded by stating:

Well, in the last, I guess **since I was 16, since I was sixteen, it wouldn’t have been five or six times, it would have been less than that, but yeah, I guess I should have put, probably at least another couple in there.** I don’t know why, for some reason I must have thought, put the last one on there, the last time you remember using it, how many times you used it at that time. But from today it should have been more dates and more number of times used on there.

Id. (*emphasis supplied*). The Individual was then asked to explain why all of his drug use was not disclosed on the QNSP. The Individual stated: “Um, I guess I was a little embarrassed maybe, I didn’t want to, uh, I didn’t, maybe if I, if I put more on there it might have affected my chances of obtaining [a DOE security clearance] I, I guess I was trying to perhaps hide some of the things I’m not proud of, that type of thing.” *Id.* The Individual then admitted that he had deliberately attempted to mislead DOE by minimizing his illegal drug use. *Id.* at 87. The Individual further admitted that he had deliberately omitted his hallucinogenic mushroom use from the QNSP in order to maximize his chances of obtaining a DOE security clearance. *Id.* at 88.

On the basis of the foregoing, the LSO concluded that the Individual had used marijuana and hallucinogenic mushrooms and then provided false information concerning his drug use to the LSO in the QNSP. An administrative review proceeding was initiated. *See* 10 C.F.R. § 710.9. The LSO then issued a letter notifying the Individual that it possessed information that raised a substantial doubt concerning his eligibility for access authorization (the Notification Letter). The Notification Letter specifies derogatory information described in 10 C.F.R. § 710.8(f).⁵

The Individual filed a Request for a Hearing with the LSO. The Request for a Hearing was accompanied by a sworn affidavit in which the Individual stated that the information provided by the Individual during the PSI was “basically correct.” Individual’s Affidavit at 1. The LSO forwarded the Request for Hearing to the Office of Hearings and Appeals (OHA) and the OHA Director appointed me as Hearing Officer. At the hearing, the LSO presented no witnesses. The Individual presented eight witnesses and testified on his own behalf. *See* Transcript of Hearing, Case No. TSO-0580 (hereinafter cited as “Tr.”). The LSO submitted eight exhibits, marked as Exhibits 1 through 8, while the Individual submitted six exhibits.⁶

⁵ The Notification Letter alleges solely that the Individual has “[d]eliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for Sensitive (or National Security) Positions, a personnel qualifications statement, a personnel security interview, written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization, or proceedings conducted pursuant to Sec. 710.20 through Sec. 710.31.” 10 C.F.R. § 710.8(f).

⁶ The Individual submitted a transcript of his college grades, three written character references, a report prepared by a Clinical Psychologist who had examined the Individual and a copy of a portion of the PSI transcript.

II. STANDARD OF REVIEW

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that “[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this opinion: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

III. ANALYSIS

The Individual submitted a QNSP on September 20, 2006. In this QNSP the Individual indicated that he had only used marijuana on one occasion since he turned 16. During a PSI conducted on August 16, 2007, the Individual admitted that he “should have put, probably at least another couple [of marijuana uses] in [the QNSP].” Exhibit 7 at 86. The Individual also admitted that he had omitted his use of hallucinogenic mushrooms from the QNSP. The Individual further admitted that he had deliberately omitted the full extent of his marijuana use as well as his hallucinogenic mushroom use from the QNSP in order to maximize his chances of obtaining a DOE security clearance. *Id.* at 87-88. Accordingly, the LSO properly invoked Criterion F for this allegation.

False statements and intentional omissions by an individual in the course of an official inquiry regarding a determination of eligibility for DOE access authorization raise serious issues of honesty, reliability, and trustworthiness. The DOE security program is based on trust, and when a security clearance holder breaches that trust, it is difficult to determine to what extent the individual can be trusted again in the future. *See, e.g., Personnel Security Hearing, Case No. VSO-028*, 27 DOE ¶ 82,821 at 85,915 (1999), *affirmed*, 27 DOE ¶ 83,030 (2000) (terminated by OSA, 2000); *Personnel Security Hearing, Case No. VSO-0013*, 25 DOE ¶ 82,752 at 85,515 (1995), *affirmed* (OSA, 1995).

A finding of derogatory information does not, however, end the evaluation of evidence concerning the individual's eligibility for access authorization. *See Personnel Security Hearing, Case No. VSO-0244*, 27 DOE ¶ 82,797, *affirmed* (OSA, 1999); *Personnel Security Hearing, Case No. VSO-0154*, 26 DOE ¶ 82,794 (1997), *affirmed*, *Personnel Security Review, Case No. VSA-0154*, 27 DOE ¶ 83,008 *affirmed* (OSA, 1998). In the end, like all Hearing Officers, I must

exercise my common sense judgment in determining whether an individual's access authorization should be restored after considering the applicable factors prescribed in 10 C.F.R. § 710.7(c). Therefore, I must consider whether the Individual has submitted sufficient evidence of mitigation to resolve the security concerns raised by his falsification.

At the hearing, the Individual testified that he was completely honest about his marijuana use in his QNSP. Tr. at 109. The Individual repeatedly testified that he has only used marijuana once since he turned sixteen. *Id.* at 109, 114, 117. The Individual further testified that he had been confused during the PSI and had therefore incorrectly admitted using marijuana more than once since he turned sixteen. *Id.* at 95-96. The Individual testified that the Personnel Security Specialist who conducted the PSI incorrectly indicated that he had to list each use of marijuana in the previous ten years (instead of the shorter of seven years or since he had turned sixteen). *Id.* at 100-101, 110-111. This confusion, the Individual testified, caused him to incorrectly state that he had used marijuana more than once since he turned sixteen. *Id.* at 112. The Individual testified that "he wasn't thinking clearly" when he provided this answer. *Id.* The Individual further testified that he "was just trying to give [the interviewer] an answer that she kind of wanted or something." *Id.* at 114. The Individual further testified that his intentional provision of false information was "something that has been very out of character for me" and that his actions were "stupid." *Id.* at 122.

In a number of decisions, DOE Hearing Officers have considered the implications of falsifications. The factors considered in these cases include the following: whether the individual came forward voluntarily to renounce his falsifications, *compare Personnel Security Hearing, Case No. VSO-0037*, 25 DOE ¶ 82,778 (1995), *affirmed* (OSA, 1996) (voluntary disclosure by the individual), *with Personnel Security Hearing, Case No. VSO-0327*, 28 DOE ¶ 83,005 (2000), *affirmed* (OSA, 2000) (falsification discovered by DOE security); the length of time the falsehood was maintained; whether a pattern of falsification is evident; and the amount of time that has transpired since the individual's admission. *See Case No. VSO-0327* (less than a year of truthfulness insufficient to overcome long history of misstating professional credentials). *See also Personnel Security Hearing, Case No. VSO-0289*, 27 DOE ¶ 82,823 (1999) (19 months since last falsification not sufficient evidence of reformation from falsifying by denying drug use); *Personnel Security Hearing, Case No. VSO-0319*, 27 DOE ¶ 82,851 (2000), *affirmed* (OSA, 2000).

In other cases, Hearing Officers have stated that a subsequent pattern of responsible behavior is of vital importance to mitigating security concerns arising from irresponsible behavior such as lying. *See, e.g., Personnel Security Hearing, Case No. TSO-0394*, 29 DOE ¶ 82, 984 (2006) (six months of honest behavior not sufficient to mitigate dishonesty that spanned for nine months when Individual's admission of previous dishonesty occurred in response to a DOE Psychiatrist's suggestion that he might have her tested for drug use); *Personnel Security Hearing, Case No. TSO-0316* (finding that the Individual had failed to establish a pattern of honest behavior); *Personnel Security Hearing, Case No. TSO-0302*, 29 DOE ¶ 82, 968 (2006) (10 months of honest behavior not sufficient to mitigate falsehood that spanned 16 years); *Personnel Security Hearing, Case No. VSO-0555*, (seven months of honest behavior not sufficient to mitigate dishonesty that spanned for six years when disclosure of falsifications was

not voluntary); *Personnel Security Hearing, Case No. VSO-0448*, 28 DOE ¶ 82,816 (2001) *affirmed* (OSA, 2001) (11-month period not sufficient to mitigate four-year period of deception); *Personnel Security Hearing, Case No. VSO-0440*, 28 DOE ¶ 82,816 (2001) *affirmed* (OSA, 2001) (18 months of responsible, honest behavior sufficient evidence of reformation from dishonesty that spanned six months in duration), *Personnel Security Hearing, Case No. VSO-0384 (2001)* (six months of honest behavior not sufficient to mitigate dishonesty that spanned for nine months when disclosure of falsifications was not complete); (*Personnel Security Hearing, Case No. VSO-0289*, 27 DOE ¶ 82,823 (1999), *affirmed*, *Personnel Security Review*, 27 DOE ¶ 83,025 (2000) *affirmed* (OSA, 2000) (19-month period not sufficient to mitigate lying on security form after a 12-year period of concealment of violations of the DOE Drug Certification).

Turning to the present case, I find that the Individual has not established a pattern of responsible behavior. Before I could consider whether the Individual has established a pattern of responsible behavior, I would need to be convinced that the Individual is currently being completely candid with me and the LSO. Throughout the present proceeding, the Individual has presented conflicting accounts of his provision of false, misleading or intentionally incomplete information to the LSO.

The Individual omitted mentioning his hallucinogenic mushroom use from his QNSP and from his interview with an OPM investigator. The Individual subsequently admitted his omissions at the PSI, where he further admitted he had deliberately omitted his hallucinogenic mushroom use from the QNSP in order to maximize his chances of obtaining a DOE security clearance. Exhibit 7 at 88. At the hearing, the Individual provided a conflicting account: he testified that he was confused about whether or not he was required to list his hallucinogenic mushroom use in the QNSP and that he was not trying to “manipulate the system” by omitting it from the . *Id.* at 105-107. The Individual also admitted, at the hearing, that he should not have omitted QNSP his hallucinogenic mushroom use from the QNSP. Tr. at 94-95, 105-107.

Moreover, the Individual’s contention that he has only used marijuana on one occasion since his sixteenth birthday (and therefore did not falsify the extent of his relevant drug use on his QNSP) is not convincing. While the transcript of the PSI does indicate that the Individual may well have been provided confusing information about the time period covered by the QNSP, it also contains his clear admission during the PSI that he under-reported the extent of his marijuana that occurred after he turned sixteen. Moreover, the record indicates that the Individual underwent an evaluation conducted by a Clinical Psychologist on February 11, 2007. The Clinical Psychologist did not testify at the hearing, but a four-page report prepared by the Clinical Psychologist was submitted by the Individual into the record. The Clinical Psychologist’s Report states that the Individual made the following statement during her examination of him: “I made a mistake about not disclosing the mushrooms. I could have disclosed more about marijuana. I saw the opportunity for the rest of my life and I didn’t want my past to ruin it.”⁷ Clinical Psychologist’s Report at 3. This evidence leads me to conclude that

⁷ The Clinical Psychologist’s Report further quotes the Individual as stating:

I’m glad I know [illegal drug use] is not for me, but I thought this is a great opportunity. I don’t

the Individual was not being candid when he repeatedly testified at the hearing that he only used marijuana on one occasion since he turned sixteen. Since I am not convinced that the Individual was completely candid, I cannot find that he has resolved the security concerns raised under Criterion F.

I reach this conclusion in spite of the testimony of several witnesses who testified that the Individual is an honest and good person, his mother's testimony that he is a good son, his best friend's testimony that he is a steadfast and loyal friend as well as "a man of integrity," and his supervisors' testimony that he is a good employee. (Tr. at 13-16, 21-24, 34-41, 44-46, 49, 57-60, 67-68, 74-77, 84, 141-144, 149-156). The Individual's youth may have been a factor in his decision to provide false or misleading information to the LSO. The Individual was only 22 years old at the time of the hearing and had yet to complete college. Nevertheless, since the Individual has not convinced me that his testimony at the hearing was completely candid, he has not resolved the security concerns arising under Criterion F.

IV. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Criterion F. The Individual has not mitigated the security concerns raised under this criterion. I therefore find that the Individual has not demonstrated that granting his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, it is my opinion that the Individual's access authorization should not be granted. The Individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Hearing Officer
Office of Hearings and Appeals

Date: May 27, 2008

want something from my past to get in the way of my future. They won't give me a job if they know some of the things I did and they wouldn't let me handle some of this stuff. I must look the best I can.

Clinical Psychologist's Report at 2.